

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE LUNA and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-2067; Submitted on the Record;
Issued September 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a ratable hearing loss in the performance of duty.

On June 12, 1995 appellant, then a 59-year-old mechanical engineering technician, filed a claim for a hearing loss which he attributed to hazardous noise exposure in his federal employment.

By letter dated August 10, 1995, the Office of Workers' Compensation Programs referred appellant to Dr. James G. Rose, a Board-certified otolaryngologist, for an examination and evaluation as to whether he had sustained any compensable hearing loss causally related to his federal employment.

In a report dated August 28, 1995, Dr. Rose provided a history of appellant's condition and findings on examination and stated that an audiogram revealed a bilateral high frequency sensorineural hearing loss. The accompanying audiogram revealed the following test results at 500, 1,000, 2,000 and 3,000 cycles per second: 5, 5, 5 and 55 decibels, respectively, in the right ear and 5, 5, 15 and 55 decibels in the left ear.

Based upon Dr. Rose's report, an Office medical consultant and Board-certified otolaryngologist, Dr. Brian Schindler, applied the Office's standardized hearing loss procedures in a report dated December 29, 1995 and found that appellant had sustained a zero percent loss in the right ear and a zero percent loss in the left ear for a zero percent binaural loss.

By decision dated March 25, 1996, the Office determined that appellant had sustained a permanent partial hearing loss bilaterally but that the level of hearing loss was not compensable based upon the Office's standards.

The Board finds that appellant has not sustained a ratable hearing loss in the performance of duty.

In his report dated August 28, 1995, Dr. Rose, a Board-certified otolaryngologist and Office referral physician, attached the findings of audiometric testing. The findings revealed that appellant had decibel losses of 5, 5, 15, and 55 decibels upon testing of the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively and decibel losses of 5, 5, 5 and 55 decibels upon testing of the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second, respectively.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.¹ The Act, however, does not specify the manner, in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² However, as a matter of administrative practice the Board has stated, "For consistent results and to insure equal justice under law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."³

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁴ Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁵ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁶ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁸ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁹

On December 29, 1995 the Office medical consultant reviewed the otologic and audiologic testing performed on appellant by Dr. Rose and applied the Office's standardized procedures to this evaluation. Testing for the left ear at the frequency levels of 500, 1,000, 2,000

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781, 783 (1986); *Richard Beggs*, 28 ECAB 387, 390-91 (1977).

³ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324-25 (1961).

⁴ *George L. Cooper*, 40 ECAB 296, 302 (1988).

⁵ A.M.A., *Guides*, 174-75 (3d ed. rev., 1990).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Donald A. Larson*, 41 ECAB 947, 951 (1990).

and 3,000 cycles per second revealed decibel losses of 5, 5, 15 and 55 respectively. These decibel losses were totaled at 80 decibels and were divided by 4 to obtain the average hearing loss of 20 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) and multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the left ear. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 5, 5, 5 and 55 respectively. These decibel losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss of 17.5 decibels. This average was then reduced by 25 decibels and multiplied by the established factor of 1.5 to compute a 0 percent hearing loss in the right ear.

The March 25, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 22, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member